



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0889; FRL-9666-3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Approval of 2011 Consent Decree to Control Emissions from the GenOn Chalk Point Generating Station; Removal of 1978 and 1979 Consent Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the Maryland Department of the Environment (MDE) pertaining to the GenOn Chalk Point Generating Station (Chalk Point). These revisions approve specific provisions of a 2011 Consent Decree between MDE and GenOn to reduce particulate matter (PM), sulfur oxides (SO_x), and nitrogen oxides (NO_x) from Chalk Point. These revisions also remove the 1978 and 1979 Consent Orders for the Chalk Point generating station from the Maryland SIP as those Consent Orders have been superseded by the 2011 Consent Decree. EPA is approving these SIP revisions because the reductions of PM, SO_x, and NO_x are beneficial for reducing ambient levels of the PM, sulfur dioxide (SO₂), nitrogen dioxide (NO₂) and ozone. They also reduce visible emissions from Chalk Point. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on [insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the

rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2011-0889** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: spink.marcia@epa.gov
- C. Mail: EPA-R03-OAR-2011-0889, Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2011-0889**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director for Policy and Science, Air Protection Division, Project officer, (215) 814-2104 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION: On October 12, 2011, MDE submitted revisions to its SIP for the GenOn Chalk Point generating station located at 25100 Chalk Point Road in Aquasco, Maryland. These revisions approve a 2011 Consent Decree between MDE and GenOn to control PM, SO_x and NO_x from Chalk Point. These revisions also remove the 1978 and 1979 Consent Orders for Chalk Point from the Maryland SIP as those Consent Orders have been superseded by the 2011 Consent Decree. The purpose of the 2011 Consent Decree is to

address stack test violations at Chalk Point Unit #4. As part of the settlement with MDE, GenOn has agreed to combust natural gas in Units #3 and #4 for no less than 75% of the annual heat input of the units, and for at least 95% of the ozone season (May 1st – September 30th) heat input instead of #6 fuel oil. Burning natural gas instead of #6 fuel oil results in a significant decrease in emissions of PM, SO_x and NO_x. These SIP revisions to reduce PM, SO_x, and NO_x emissions are beneficial for reducing ambient levels of the criteria pollutants PM, SO₂, and NO₂. As NO_x is a precursor pollutant of ground level ozone, these reductions are also beneficial for reducing ambient levels of the criteria pollutant ozone. In addition, these revisions reduce visible emissions from Chalk Point.

I. Background

The Chalk Point generating station consists of four steam electric generating units located in Aquasco, Maryland which is part of Prince George County. Units #1 and #2 are coal fired baseload units each rated at 355 megawatts. Units #3 and #4 are cycling units permitted to burn natural gas and oil, each rated at 640 megawatts. Consent Orders signed in 1978 and 1979 with the Potomac Electric Power Company (Pepco, the former owner) allowed Chalk Point Units #1 - #3 to combust higher sulfur fuels than Maryland regulations allow and Unit #3 was also allowed to emit higher PM and visible emissions than Maryland regulations allow. In 2006, MDE and Pepco signed a Consent Decree to address opacity (visible emissions) violations from Chalk point Units #3 and #4. That 2006 Consent Decree required Units #3 and #4 to burn natural gas during the ozone season for 95% of the heat input. The 2006 Consent Decree for Chalk Point also terminated the 1978 and 1979 Consent Orders with Pepco, effective May 1, 2007. However, the Maryland SIP was not revised at that time to remove the 1978 and 1979 Consent Orders and replace them with the 2006 Consent Decree.

II. Summary of the SIP Revision

In 2011, MDE and GenOn (new owner of Chalk Point) signed a Consent Decree, effective on March 10, 2011, for Chalk Point which amends, restates, and replaces the 2006 Consent Decree. On October 11, 2012, MDE submitted specific provisions of the 2011 Consent Decree to EPA for approval as a SIP revision. A copy of the provisions of the 2011 Consent Decree for Chalk Point for which MDE is requesting approval as SIP revisions is included in the docket for this rulemaking. Hereafter in describing the SIP revision, EPA is referring to the provisions of the 2011 Consent Decree that are being made part of the SIP. The October 11, 2012 SIP revision submittal from MDE also includes a request to remove the 1978 and 1979 Consent Orders for Chalk Point from the Maryland SIP.

Under the 2011 Consent Decree, Chalk Point Units #3 and #4 must burn natural gas for no less than 75% of the annual heat input of the units. In addition, the 2011 Consent Decree reiterates the 2006 Consent Decree's requirement that Chalk Point Units #3 and #4 use natural gas for at least 95% of the ozone season heat input. The 2011 Consent Decree also requires Chalk Point to perform a stack test for PM while burning residual fuel oil in 2011, and to perform stack testing for PM from Units #3 and #4 any calendar year that either unit exceeds 570,000 MBTU from the burning of residual fuel oil. The 2011 Consent Decree submitted for approval as a revision to the Maryland SIP also includes provisions for determining compliance, operating control equipment, determining the sulfur content of fuel, as well as recordkeeping and reporting requirements consistent with Federal regulations and the CAA.

GenOn's compliance with the 2006 Consent Decree, the requirements of which are reiterated in

the 2011 Consent Decree, have resulted in significant annual emission reduction benefits because of the shift to natural gas during the ozone season. In 2005, Chalk Point Units #3 and #4 emitted 3,978 tons per year (TPY) of NO_x, 744 TPY of PM, and 12,379 TPY of sulfur oxides (SO_x). In 2008, as a result of compliance with the 2006 Consent Decree, the requirements of which are reiterated in the 2011 Consent Decree, Chalk Point Units #3 and #4 emitted 446 TPY of NO_x, 49 TPY of PM, and 244 TPY of sulfur oxides (SO_x), thereby reducing annual emissions by 3,532 TPY, 695 TPY, and 12,135 TPY, respectively. The additional provision of the 2011 Consent Decree that requires Chalk Point Units #3 and #4 to maximize the use of natural gas during the non-ozone season will result in even further reductions of NO_x, PM, and SO_x and further reductions in visible emissions.

III. Final Action

EPA's review of the SIP revisions submitted by MDE on October 12, 2011 indicates that they strengthen the SIP requirements applicable to Chalk Point; result in significant emission reductions of NO_x, PM, SO_x and visible emissions; and meet all applicable Federal regulations and the CAA. The SIP revisions to remove the 1978 and 1979 Consent Orders for Chalk Point are approvable as they have been superseded by the more stringent 2011 Consent Decree.

Therefore, EPA is approving the SIP revisions submitted by MDE on October 12, 2011. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal

Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability;

rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve a 2011 Consent Decree between MDE and the GenOn to reduce particulate matter (PM), sulfur oxides (SO_x), and nitrogen oxides (NO_x) from Chalk Point may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 16, 2012

W. C. Early
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V--Maryland

2. In § 52.1070, the table in paragraph (d) is amended by:

a. Removing the entries for Potomac Electric Company (PEPCO) -- Chalk Point Units #1 and #2 and Potomac Electric Company (PEPCO) -- Chalk Point.

b. Adding an entry for the GenOn Chalk Point Generating Station as the last entry in the table.

The amendments read as follows:

§ 52.1070 Identification of plan.

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(d) *EPA approved state source-specific requirements.*

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
* *	* *	* *	* *	* *
GenOn Chalk Point Generating Station	The 2011 Consent Decree for Chalk Point	3/10/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Docket No. 52.1070(d). The SIP approval includes specific provisions of the 2011 Consent Decree for which the State of Maryland requested approval on October 12, 2011.

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